

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD MULDER and BEVERLY MULDER,
d/b/a MAXI MOVERS EXPRESS, INC.,

UNPUBLISHED
January 25, 2005

Plaintiffs-Appellants,

v

GLENN HUBBARD, d/b/a WEST MICHIGAN
TRAILER SALES,

No. 250366
Ottawa Circuit Court
LC No. 01-041134-CZ

Defendant-Appellee.

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendant under MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a decision regarding a summary disposition motion de novo. *Rorke v Savoy Energy, LP*, 260 Mich App 251, 253; 677 NW2d 45 (2003). In reviewing the grant of a motion for summary disposition under MCR 2.116(C)(10), we consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law. *Id.*

Contrary to what plaintiffs contend on appeal, there was no evidence in the record to support a finding that defendant was liable under an undisclosed agency theory because he allegedly failed to disclose that he was acting as an agent for West Michigan Trailer Sales, Inc. ("West Michigan"). Corporations are typically treated as legally distinct from their shareholders. *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 393; 600 NW2d 406 (1999). Plaintiffs have presented no evidence to reasonably support a finding that defendant acted in his individual capacity rather than as a representative of West Michigan in connection with their dealings with West Michigan. Further, there is no evidence that defendant failed to disclose the existence of West Michigan as a corporate entity. It is true that the memos referenced by plaintiffs do not state or specifically reference West Michigan's status as a corporation. But the mere fact that these particular memos do not state West Michigan's corporate status cannot reasonably be considered as proof that defendant was acting in an individual capacity or that the corporate status of West Michigan was somehow hidden from plaintiffs. Rather, as is

commonplace in the business community with regard to people who have recurring contact, the memos are quite informal and generally focused on specific matters. Moreover, the memos include repeated use of the pronoun “we” in regard to West Michigan’s undertakings related to the trailers, which suggests that defendant was acting as a representative of West Michigan and not in an individual capacity. Also, as the trial court indicated, although plaintiff Edward Mulder may not have realized that West Michigan was a corporation, this in itself cannot reasonably support a finding that its corporate form was inappropriately concealed. In this regard, it is immaterial if defendant represented himself as the owner of West Michigan because a corporation is typically treated as distinct from its shareholders. Edward Mulder’s conclusory allegation in his affidavit that defendant “personally guaranteed” the repair of the trailers is too lacking in specific detail about the statements allegedly made by defendant to create a factual issue regarding whether defendant acted in an individual capacity in making such statements. *Rose v National Auction Group, Inc.*, 466 Mich 453, 470; 646 NW2d 455 (2002). Thus, plaintiffs have not established that the trial court erred by granting summary disposition in favor of defendant based on their undisclosed agency theory.

With regard to plaintiffs’ alternative argument to the effect that there was evidence to support piercing the corporate veil to impose individual liability on defendant for the acts of West Michigan, “[p]iercing the corporate veil is appropriate when there is evidence of fraud, illegality, or injustice.” *Shah, supra* at 393. But, from our review of the record, there is simply no evidence of fraudulent, illegal, or unjust conduct on defendant’s part. Thus, plaintiffs presented no evidence to support avoiding summary disposition under MCR 2.116(C)(10) based on a “piercing the corporate veil” theory.

Finally, contrary to plaintiffs’ argument in asserting that they should have been allowed to amend their complaint to charge defendant with personal negligence, there is no indication from the record that they ever sought to file such an amended complaint. Under MCR 2.118(A), the onus is on a party who wishes to amend a complaint to, as appropriate, either file an amended complaint or seek leave of the court (or consent of the adverse party) to do so. Because plaintiffs did not take such action, there is no basis for disturbing the grant of summary disposition in favor of defendant.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello